response to that item "materially incomplete and/or inaccurate." Thus, the MO&O's "woeful attempt to excuse TDS" from complying with Section 1.65 is "wholly unjustifiable." (Petition, pp. 19-20).

The Settling Parties either do not know or have forgotten that cellular applicants do not have to answer Item No. 18 of Form 401, as it has been deemed "not applicable" to them. See Rural Cellular Service (Third Report and Order), 64 R.R. 2d 1382, 1389 (1988).

For the reasons previously given, TDS reiterates that the UTELCO's entry into the settlement agreement was not a reportable interest.

Conclusion

For the foregoing reasons, the Petition For Reconsideration should be denied and the MO&O granting the application of TDS should be affirmed.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By _____
Alan Y. Naftalin

By _____
Peter M. Connolly

Koteen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

December 29, 1989

Attachment A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Telephone	)	File No. 10209-CL-P-715-B-88
and Data Systems, Inc. To	)	
Establish A New System In	)	
The DPCRTS To Provide Service	)	
In Wisconsin RSA #8 - Vernon	)	

REPLY TO PETITION
TO DISMISS OR DENY

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files its Reply to the "Petition To Dismiss Or Deny" its above-captioned application filed by Century Cellunet, Inc. ("Century").

Factual Background

Applications for Wisconsin RSA #8 were filed between August 31 and September 2, 1988. There were thirteen wireline applications filed, including those of TDS and Century. See Public Notice, Mimeo 1297, released January 19, 1989, Addendum, Mimeo 1890, released March 7, 1989.

According to the evidence presented in the Petition, ten of the wireline applicants in Wisconsin RSA #8 signed a settlement agreement prior to the lottery. Applicants TDS, Ameritech Mobile Communications, Inc., and GTE Mobilnet, Incorporated did not sign the settlement agreement. On February 8, 1989, according to affidavits and meeting minutes submitted by Century, members of the settlement group for Wisconsin RSA #8 met and agreed to permit four

local exchange carriers with "presence" in the RSA which had not filed applications to join the settlement group and participate in the entity which would later be created, as a consequence of the settlement agreement, to hold the construction permit, assuming one of the applicant signatories won the lottery. One of those carriers was UTELCO, Inc. ("UTELCO"), a company in which TDS holds a 49% interest. UTELCO later signed the settlement agreement, evidently prior to the lottery, though neither its signature nor the agreement itself, as submitted by Century, is dated.

The wireline lottery for Wisconsin RSA #8 was held on March 15, 1989, and was won by TDS. See Report No. CL-89-107, released March 16, 1989. TDS filed an amendment pursuant to Section 1.65 of the Commission's Rules on April 17, 1989, and was designated as tentative selectee in the RSA on June 9, 1989. See Report No. CL-89-174. On June 29, 1989, TDS filed its required financial showing and an additional Section 1.65 amendment. On July 27, 1989, Century (and only Century) filed the instant Petition.

Century makes two arguments: That TDS, the wireline lottery winner and tentative selectee in Wisconsin RSA #8 - Vernon, (1) has a prohibited cross-ownership interest in more than one application in that RSA owing to UTELCO's entering into the settlement agreement, in violation of Section 22.921(b) of the Commission's Rules, and (2) has failed to disclose that interest in violation of Section 1.65 of the Commission's Rules.

As will be shown below, both of these arguments are incorrect, and the TDS application should be granted.

I. TDS Has Not Violated Section 22.921(b)(1) of the Commission's Rules

Section 22.921(b)(1) of the FCC's Rules provides, in pertinent part, that:

> "No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered. (Emphasis added)."

As is acknowledged by Century (Petition, p. 4), TDS filed an application to serve Wisconsin RSA #8 and UTELCO did not file an application for that RSA. Nor does Century maintain that TDS had any interest in any other wireline applicant in Wisconsin RSA #8 when the applications were filed. Rather, Century argues (Petition, pp. 4-5), that because non-applicant UTELCO signed a post-filing settlement agreement with certain applicants in the RSA, including Century, TDS thereby acquired a derivative pro rata 3.5% interest in the applications of each of the participants in the settlement agreement, as well as maintaining a 100% interest in its own application. Century contends that therefore TDS is now in violation of Section 22.921(b)(1) and its application should be dismissed. As we show below, this contention is entirely incorrect.

The basic context in which this case arises derives from the Commission's policy favoring wireline settlement agreements. From the beginning, the Commission has repeatedly and consistently held that pre and post filing settlement agreements among wireline applicants, in MSAs and RSAs, serve the public interest and are

encouraged.[1] Indeed, the policy favoring settlements was a decisional factor in the Commission's decision to retain the wireline set-aside when the Commission adopted cellular lotteries.[2] Section 22.922(b)(1), the FCC's cellular cross interest rule, has been in existence since 1984,[3] that is, during the period when the Commission has encouraged and implemented wireline settlement agreements, and the Commission has never held or implied that pre-lottery wireline settlement agreements create the type of "ownership interests" which Section 22.921(b)(1) was intended to cover.

If settlement agreements had been considered to create the type of interests which are subject to Section 22.921(b)(1), then that rule would necessarily have had an exception to permit settlement-created "interests," since such interests are favored by the Commission. But there is no such exception for cross interests under Section 22.921, as there is for "major changes" in ownership under Section 22.23.[4] Consequently, "interests" created by settle-

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1 See, e.g., Cellular Communications Systems (Cellular Reconsideration Order, 89 FCC 2d 58, 76 (1982); Cellular Lottery Order, 56 R.R. 2d 8, 27 (1984); Cellular Radio Lotteries (Order on Reconsideration), 101 FCC 2d 577,588 (1985); Cellular Service (Settlements and Changes of Ownership), 59 R.R 2d 1450 (C.C. Bur. 1986); Rural Cellular Service (Third Report and Order), 64 R.R. 2d 1383, 1386 (1988); Rural Cellular Service, 64 R.R. 2d 1637 (C.C. Bur. 1988).

2 Cellular Lottery Order, 56 R.R. 2d, at 24.

3 See Cellular Lottery Order, 56 R.R. 8, 38-39 (1984).

4 Generally, major changes in the ownership of applicants cause their applications to be treated as "newly filed," and therefore subject to dismissal if the change in ownership post-dates the filing deadline. See Sections 22.23(c)(4) and 22.23(g) of the Commission's Rules.

ment agreements, including UTELCO's "interest" in issue here, are not cross-interests covered by Section 22.921.

Contrary to Century's claim, the Commission has never said that participants in wireline settlement agreements acquire pro rata interests in each other's applications. Indeed, had the Commission done so it would have effectively abolished all wireline partial settlement agreements, since such agreements would then have given all participants in them precisely the cross-interests which are proscribed by Section 22.921(b)(1). Instead, the Commission has repeatedly held that MSA and RSA wireline applicants may enter into pre and post filing settlements without becoming real parties in interest in each other's applications.[5]

Nowhere has the Commission or Common Carrier Bureau held that a violation of Section 22.921(b)(1) may be found as the consequence of any settlement arrangement, whether between applicants, or between applicants and a non-applicant, as is the case here. Century cites no cases or decisions to that effect. The three cases cited by Century in which violations of Section 22.921(b)(1) were found to exist all involved forbidden cross-interests among

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However, in 1984 an exception was created by Section 22.23(g)(4) to permit "major changes" caused by settlement agreements to be made without treating the applications as "newly filed."

5 See Rural Cellular Service, supra, 64 R.R. 2d, at 1637-38.

initial applicants.[6] The cases have nothing whatever to do with interests created by settlement agreements.

What Century has done is to confuse the concept of "cumulative lottery chances," which the Commission and Common Carrier Bureau have repeatedly stated may be obtained by settling wireline applicants in an MSA or RSA, with reciprocal pro rata interests in each other's applications, which the Commission has never said are created by such settlement agreements.

Century appears to be arguing that its own action and that of its fellow signatories to its settlement agreement in admitting UTELCO somehow brought the application of TDS within the ambit of Section 22.921(b)(1). Not only is there, as noted above, no precedent for this strange conclusion, but it is also contrary to the language of Section 22.921(b)(1) and to the dictates of fundamental fairness.

Section 22.921(b)(1), by its terms, forbids any party from holding a forbidden cross interest in more than one application for the same RSA. Applications are of course filed only by applicants. The Rule does not discuss settlement agreements or any interests which may be created by them. Accordingly, it cannot reasonably be construed to include such interests.

Moreover, it is fair and reasonable for the FCC to hold applicants and only applicants responsible for any forbidden cross-

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6 MV Cellular, Inc., 103 FCC 2d 414, 418-20 (1986); Portland Cellular Partnership, 2 FCC Rcd 5586, 5587, (MSD 1987) aff'd 4 FCC Rcd 2050 (FCC) (1989); and Henry County Telephone Company, et al. Mimeo No. 2747 (C.C. Bur., released February 21, 1986).

interests that may exist among them. All applicants are on notice about what the rules require, and can take whatever steps are necessary to comply with the Rules. However, it is not comparably fair or reasonable to hold an applicant responsible for a settlement agreement reached by a non-applicant company, including one in which the applicant may have a minority ownership position, with other applicants.

As noted above, the FCC has never said or even intimated that Section 22.921(b)(1) was intended to cover the interests created by settlement agreements, let alone interests arguably created by the actions of non-applicants signing such agreements. Before imposing the draconian sanction of dismissal, which is what Century seeks in this case, due process and fundamental fairness require that the standard prescribed by a Commission rule be clear and readily ascertainable. See Radio Athens, Inc. (WATH) v. FCC, 401 F. 2d 398, 404 (D.C. Cir. 1968) (FCC dismissal of radio station application reversed when the application of the broadcast cross-ownership rule to applicant was ambiguous); Salzer v. FCC, 778 F. 2d 869,875 (D.C. Cir. 1985) (FCC dismissal of LPTV applications reversed when standard for application acceptance was unclear); Maxcell Telecom Plus, Inc. v. FCC, 815 F. 2d 1551, 1560 (D.C. Cir. 1987) (FCC provided insufficient notice of filing requirements before dismissing cellular "fill in" application). The requirements of Section 22.921(b)(1) would certainly not have met the required standard of clarity if TDS were now held to have violated the rule.

On February 8, 1989, the applicant signatories to the Wisconsin RSA #8 settlement agreement chose to admit four non-applicants, including UTELCO, as signatories to the agreement (Exhibit 2 to Englade Affidavit attached to Petition). They did this with full knowledge of UTELCO's partial ownership by TDS (Englade Affidavit, p. 2). TDS chose not to sign the settlement agreement, a fact of which the signatories to the agreement were obviously aware well before the lottery.[7] At no time before the lottery did the signatories seek to expel UTELCO from the settlement group or indicate that its participation in the group was improper. Had one of the settlement group members won the lottery, UTELCO would evidently have been a member of the proposed permittee partnership.

However, a signatory to the settlement agreement did not win the lottery, and evidently lacking any other weapon to strike at the lottery winner, Century seeks to use an agreement to which it is a party and TDS is not, and with which it previously found no fault, to attack TDS.

Century is attempting to entangle TDS with Century's settlement agreement. Nothing in the FCC's rules or polices permits it to do so. Indeed, the FCC has consistently held that lottery winners are not in any way subject to settlement agreements, even agreements the lottery winner has signed, unless the lottery winner chooses to amend its own application to substitute an entity formed

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[7] In the letter from David C. Thurow to Edward Towers of TDS, dated February 28, 1989, TDS is urgently requested to complete its final review of the proposed settlement agreement by March 3, 1989. The lottery took place on March 15, 1989.

as a consequence of the settlement agreement as the applicant. See American Cellular Network Corp. of Nevada, 63 R.R. 2d 1313 (1987). TDS is a fortiori free to refuse Century's poisoned "gift" of an interest in the applications of the settlement group members in this case.

Finally, it should be noted that the Wisconsin RSA #8 settlement agreement, by its terms, is not yet operative and therefore cannot create rights or obligations for its signatories, let alone non-parties to it.

Section 6(a) of the Agreement provides, in pertinent part:

> "Within seven days following the FCC's announcement of the lottery results..., the lottery winner shall file with the FCC the paper original and two hard copies of its application."

Section 6(c) provides:

> "In the event a full settlement is not reached in the RSA and a lottery is held, each Party agrees that, in the event this agreement is approved by the FCC, if such approval is required, and the application of a Party to this agreement is selected by the FCC, said Party shall assign its right in the construction permit to the Partnership, contemplated hereby, and other parties to this agreement shall not pursue their applications or take any action to dismissal of an application of any other Party to this agreement."

Thus, if a full settlement in the RSA was not reached, as it was not, the triggering event giving rise to the parties' obligations and rights under the agreement was a victory by one of them in the lottery. In the absence of that, the agreement was of no force and effect, for it created no filing obligations on the part of a lottery winner and thus no right to acquire ownership inter-

ests in the eventual permittee on the part of the other signatories.

Century ignores the fact that the lottery was not won by a party to the agreement and asserts, in essence, that although the agreement is not operative and that none of the parties to the agreement yet have any duties to perform under it, that TDS, a non-party, has somehow gained interests in other applications through the operation of the agreement sufficient to cause TDS's own application to violate the rules. Such reasoning is self-serving and specious.

Century's argument that TDS has somehow acquired interests in other applications which result in a violation of Section 22.921(b)(1) is not supported by precedent, logic or fairness. It should be rejected.

II. TDS Had No Obligations Under Section 1.65 Of The Commission's Rules To Report UTELCO's Entering The Settlement Agreement

Section 1.65 of the Commission's Rules provides, in pertinent part:

> "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application...[W]henever the information furnished in the pending application is no longer accurate in all significant respects, the applicant shall...amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate..."

TDS has twice amended its application subsequent to the lottery, pursuant to Section 1.65 of the Rules, to apprise the Commission of minor changes in the ownership information previously supplied and of changes in TDS's subsidiaries and affiliates. As

Century acknowledges, TDS's ownership interests in UTELCO were listed in both amendments.

TDS did not however discuss UTELCO's entering into the settlement agreement discussed above.

It did not occur to TDS that it had an obligation to report the existence of a settlement agreement to which it was not a party and which it had no intention or way of implementing. It did not occur to TDS that the action of UTELCO in entering into an agreement, which did not include TDS rendered the information furnished in TDS's application inaccurate in any "significant respect" or indeed in any respect. Nor does Century cite any authority to suggest that this type of "interest" is reportable under Section 1.65 of the Commission's Rules.

If the FCC does nonetheless consider UTELCO's entering into the settlement agreement to be a reportable event, TDS regrets its error and will file a corrective amendment. However, we reiterate our position that since the settlement agreement imposes neither duties nor obligations on TDS and does not change in any way the information in TDS's application, as amended, TDS had no obligation to report its existence.

Conclusion

For the foregoing reasons, the Petition To Dismiss or Deny filed by Century should be denied and TDS's application should be expeditiously granted.

Respectfully submitted,

By: /s/ Alan Y. Naftalin
Alan Y. Naftalin

/s/ Peter M. Connolly
Peter M. Connolly

Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

August 28, 1989

Its Attorneys

Certificate of Service

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Opposition" on the following, by First Class United States mail, this 29th day of December, 1989:

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036

Theresa Belser

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Chief, Common Carrier Bureau

REPLY TO OPPOSITION

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully reply to the opposition filed by Telephone and Data Systems, Inc. ("TDS")* to their Petition for Reconsideration of the

* Opposition to Petition for Reconsideration, File No. 10209-CL-P-715-B-88, dated December 29, 1989 (hereinafter cited as the "TDS Opp.").

Memorandum Opinion and Order ("MO&O") issued herein by the Chief, Mobile Services Division, DA 89-1420, adopted November 1, 1989 and released November 13, 1989, which granted the captioned application. As their reply, the Settling Partners respectfully show:

In its opposition TDS predictably seeks to wrap itself around the challenged MO&O and urges its correctness in all respects. In doing so, of course, TDS chooses not to come to grips with the central thrust of the Settling Partners' position, perhaps in tacit recognition that the logic and conclusions of the MO&O are fundamentally untenable. In any case, TDS' opposition does highlight certain points which serve to underscore the fallacies in the MO&O, and thus which merit limited additional comment.

With respect to the proper interpretation of "direct or indirect" "ownership interest" for purposes of Section 22.921(b)(1) of the rules (see Petition at pp. 7-16), TDS reiterates its position that "settlement agreements do not create any form of ownership interests which are cognizable under Section 22.921(b)(1)",* and scoffs at the "medieval" origins of the property interest, viz., a "chose in action," created by the settlement agreement between UTELCO and the Settling Partners. TDS concludes its discussion with the observation that "if any entity did possess a 'chose in action' with respect to the applications of Century and the other settlement group members, it would be non-applicant

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* TDS Opp. at p. 4. (Emphasis in original).

UTELCO and not UTELCO's minority stockholder, TDS".*

TDS' own characterization of its position is extremely telling. At bottom, TDS apparently concedes, albeit tacitly, that the settlement did indeed create a "form of ownership interest[]" within the meaning of the rule, but TDS contends nonetheless that the "form of ownership interest[]" created thereby simply is not a "form ... which is cognizable" under Section 22.921(b)(1).

However, the Settling Partners' central point in this regard is that there is no lawful basis for so narrowing the scope of "ownership interests which are cognizable under Section 22.921(b)(1)". The express language of the rule itself is not confined to only certain forms of ownership interests, but instead refers to such interests in broad and unqualified terms. Moreover, artificially narrowing the scope of the rule undermines its purpose, as explained in previous pleadings.** Such a narrowing of its scope also is fundamentally inconsistent with the Commission's policy under Part 22, stated in Item No. 18 of FCC Form 401.***

Additionally, assuming that the settlement did create a

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* Id. at pp. 4-5.

** See, e.g., Petition at pp. 10-16.

*** In relevant part, Item No. 18 elaborates on the concept of "ownership interest" for purposes of Part 22 as one which is "direct[] or indirect[], through stock ownership, contract, or otherwise", whether of a "licensed radio station[] or pending application[] for radio station". In the absence of contrary precedent (and there is none), this broad concept of ownership interest is the one which the staff must apply under delegated authority. However, the staff erroneously failed to do so in the MO&O.

"ownership interest" by UTELCO, as the Settling Partners contend, TDS' further attempt to avoid responsibility for UTELCO's "ownership interest" is readily disposed of. UTELCO is a "subsidiary" of TDS under FCC rules,* and Section 22.921(b)(1) expressly includes both "direct and indirect" ownership interests. An "ownership interest" held by a "subsidiary" is the clearest possible form of "indirect" ownership interest, and thus is plainly within the terms of Section 22.921(b)(1).**

In short, there is no lawful basis for narrowing the scope of "ownership interest" for purpose of Section 22.921, as TDS and the MO&O seek to do. Moreover, contrary to its position herein, TDS is indeed chargeable with and accountable for the actions of its "subsidiary", UTELCO.***

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* See 47 C.F.R. Sec. 22.13(a)(1)(i). The Settling Partners also must point out that TDS incorrectly pretends to be merely a "minority stockholder" in UTELCO. In point of fact, not only does TDS already own 49% of UTELCO's stock (see Attachment B to Petition to Dismiss or Deny, dated July 27, 1989), but it also has an option to acquire at any time the remaining 51%. (See Form 490 application for FCC consent to the transfer of control to Monroe Communications filed September 8, 1986, at Exhibits I & III). Moreover, the balance of UTELCO's stock is widely distributed among a number of individuals, none of whom holds as much as 10%. (Attachment B to Petition, supra). Thus, UTELCO must be deemed to be an integral component of TDS' corporate empire for all purposes herein.

** This discussion also refutes TDS' contention that "UTELCO['s] ... relationship to TDS is not properly before the FCC". TDS Opp. at p. 9 & n. 3. Section 22.13(a)(1) of the rules expressly makes it so when it defines the "real party ... in interest" in "[e]ach application for a radio station authorization" to include "subsidiaries".

*** TDS also incorporates by reference an argument at pages 3-7 in its earlier Reply to Petition to Dismiss or Deny, as to which the Settling Partners have not heretofore

TDS further seeks to avoid enforcement of the "joint enterprise[]" provision of Section 22.33(b)(2) of the rules, as alternatively requested by the Settling Partners,* arguing that the provision cannot apply because TDS was not a signatory to the settlement agreement, and UTELCO was not an applicant. TDS Opp. at p. 8.

TDS' contention appears to be that Section 22.33(b)(2) applies by its express terms only to partial settlements in which all of the parties thereto are actual "applicants". According to TDS, since UTELCO was not an "applicant" the rule perforce cannot apply to any settlement to which it is a party.

Under TDS' construction, however, no settlement group that includes non-applicant wirelines would be entitled to cumulative chances in the lottery, an absurd and obviously incorrect result. That is so because it is Section 22.33(b)(2) which confers the right to have cumulative lottery chances in the first place. Thus, if that section of the rules does not apply to settlement groups which

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had an opportunity to respond. TDS' contention is that if settlement agreements create an "ownership interest" in an application within the meaning of Section 22.921(b)(1) of the rules, as the Settling Partners contend, then there would also have to be exception contained therein for such settlement-created "interests," or the policy favoring wireline settlements would effectively be vitiated. Since no such exception is contained in the rule, TDS concludes that settlements do not create ownership interests within the meaning of Section 22.921(b)(1). The short answer is that in making the argument, TDS improperly twists the Settling Partners' position, as already explained in the Petition for Reconsideration at p. 9 & n. *.

* See Petition for Reconsideration at pp. 16-18.

include non-applicant members, as TDS contends, then it would also follow that such groups are not lawfully entitled to have cumulative lottery chances at all. That emphatically is not the case, as TDS well knows.

TDS' contention actually rests upon an interpretation patently out of context of the phrase "settlements among wireline applicants only" in Section 22.33(b)(2). That phrase merely establishes that settlements involving wireline applicants will receive cumulative lottery chances; whereas, no such cumulative lottery chances are given to settlements involving non-wireline applicants. That is, the distinction made by the phrase in question is between wireline and non-wireline "applicants," and not, as TDS suggests, between "wireline" applicants and non-applicants.

TDS' further observation that it was not a signatory to the settlement agreement merely begs the issue raised by the Settling Partners. In a purely formal sense, it is obviously true that TDS itself did not sign the settlement agreement; but the issue is whether TDS lawfully must be held accountable for and chargeable with the actions of its subsidiary UTELCO. The otherwise uniform practice of this Commission under Part 22 is that the corporate veil between parent and subsidiary corporations is disregarded for purposes of regulatory policy and rules; and neither TDS nor the MO&O provides any creditable basis whatsoever for now departing from this uniform practice.

Applying this uniform practice to the case at bar, TDS, through its subsidiary UTELCO, was a part of the "joint enterprise" which was entitled under Section 22.33(b) to the "cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached". If TDS persists in maintaining its own individual application herein, the Settling Partners would have received only ten cumulative chances, not the eleven chances including TDS that the rule mandates. In such case, therefore, the requirements of Section 22.33(b) plainly are unsatisfied.

Accordingly, in order to properly enforce Section 22.33(b), either TDS' application should be dismissed as defective, or another lottery should be held with the correct number of cumulative lottery chances provided for the Settling Partners. In either case, proper enforcement of Section 22.33(b) mandates that the MO&O be reversed and set aside.*

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* TDS' affected umbrage at the suggestion that the record demonstrates prima facie bad faith negotiations by it with the Settling Partners, warrants only a brief response. The essence of bad faith negotiation is an abrupt and unexplained refusal to agree, particularly after lengthy discussions pointing to an agreement. Contrary to TDS' protestations, that is precisely what the record herein demonstrates prima facie; and unsworn declarations of innocence by counsel for TDS (TDS Opp. at p. 6) are plainly insufficient to overcome such demonstration. Moreover, the existence vel non of civil remedies in Wisconsin for certain aspects of TDS' conduct is entirely irrelevant to the proper exercise of the Commission's unexceptioned duty to "execute and enforce" the provisions of the Communications Act. See 47 U.S.C. Sec. 151. As to TDS' assertion that such issues are "irrelevant" and "fail[] to make any claim which raises a substantial and material question as to TDS's

The foregoing discussion also obviates the need for extended response to TDS' contention that it had no obligation to report its subsidiary's entry into the settlement agreement for the Wisconsin 8 RSA. Again, by focusing upon whether or not it was required to respond to Item No. 18 of Form 401 in this particular application, TDS conveniently attempts to slip the central point.

The MO&O concedes, as it must, that entering into a settlement agreement is a material, and, therefore, "reportable" event in the case of cellular applications for purposes of Section 1.65 of the rules. (MO&O at Para. 7). Thus, the only material point of disagreement is whether the fact that TDS did so indirectly through its subsidiary UTELCO, rather than directly in its own name, takes the otherwise "reportable" event beyond the realm of Section 1.65.

In this connection, only the question of the obligation to <u>disclose</u> the event in question is involved; and it does not matter for this purpose whether the reported event ultimately results in any particular substantive action by the Commission.* Without broad disclosure of

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qualifications to hold its license," TDS Opp. at pp. 5-6, the Settling Partners have already explained their reasons for disagreeing and need not reiterate them here.

* As the Supreme Court has observed in an analogous context, "[t]he fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." <u>FCC v. WOKO</u>, 329 U.S. 223, 227 (1946).

relevant and "reportable" events, the Commission cannot hope to make informed decisions in the public interest. Accordingly, interpretations of disclosure requirements which serve to narrow the scope of such disclosures are at least suspect and must be thoroughly justified.

Not only did the MO&O fail to do so, but its interpretation is inconsistent with standard Commission practice under Part 22 to disregard corporate veils for similar disclosure purposes. See, e.g., Item No. 18 of FCC Form 401; Section 22.13(a)(1) of the rules, 47 C.F.R. Sec. 22.13(a)(1). Accordingly, the MO&O's unwarranted attempt to excuse TDS from compliance with Section 1.65 is arbitrary and unlawful.

WHEREFORE, for the reasons stated above and in their Petition for Reconsideration herein, the Settling Partners respectfully submit that the MO&O should be reversed and TDS' application should be dismissed as defective for violations of Sections 22.921(b)(1) and 1.65 of the rules, and that the Wisconsin 8 RSA should be submitted for another lottery. Alternatively, the Commission should conclude that TDS, through UTELCO, was part of the "joint enterprise" entitled to eleven cumulative lottery chances for the Wisconsin 8 RSA wireline cellular license. Absent a curative amendment of its application by TDS, the Commission should dismiss it as defective and hold another lottery for the Wisconsin 8 RSA.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
VIROQUA TELEPHONE COMPANY

By Kenneth E. Hardman
Kenneth E. Hardman

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Telephone: 223-3772

Their Attorney

January 11, 1990

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply to Opposition upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 11th day of January, 1990.

Kenneth E. Hardman
Kenneth E. Hardman